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SENSITIVE

SIPDIS

DEPT FOR SCA/CEN CGuest, SCA/EX/PMO, JSalpini, L/BA - TMeyer  
DEPT ALSO FOR OBO/PRE/BAS KTroutman and OBO/OM/AM/SCA MUNGlesbee  
AMEMBASSY TASHKENT FOR FM

E.O. 12958: N/A

TAGS: [AMGT](#) [ABLD](#) [TX](#)

SUBJECT: Ashgabat: Request to Remove Article 14 from Model Lease

Ref: Emails Meyer/Bayat 02/26/2009-03/01/2009

11. (U) Sensitive but unclassified. Not for public internet.

12. (U) ACTION REQUEST: This is a time sensitive action request for permission to remove Article 14, Disputes Resolution, from Post's residential leases in order to continue normal leasing operations. See para. 8.

13. (SBU) SUMMARY: A recent host Government decree requires Post's residential landlords to register their leases with local government authorities and request permission to lease their apartments and houses. The local authorities are compelling the exclusive use of a locally designed "model lease," to replace all existing leases, regardless of status or terms. Post management has determined the local model lease to be detrimental to USG interests, which includes, among other things, a maximum lease term of one year. Through careful negotiation, Post believes it can get approval from the registering authorities to avoid the local model lease by submitting an amended version of the standard OBO lease for registration and approval. Because of Turkmenistan's flawed and ineffective judicial system, Post believes the best way to protect USG leasing interests is to find a negotiated solution with those who control its ability to rent residential properties. Local registration authorities have demonstrated a willingness to review the USG lease once Article 14 is removed and Post requests Department approval to amend its leases accordingly. END SUMMARY.

#### NEW DECREE REQUIRES NEW LEASES

14. (U) A January 2009 decree from Turkmenistan's highest interagency body, the Council Of Ministers, requires all residential landlords to re-register their leases with local authorities and seek permission to lease their apartments and houses. Embassy landlords who have tried to register the standard U.S. Government lease have been rejected and instructed to sign a new local model lease. The new local model lease radically differs from the USG model, substantively altering or neglecting nearly every element of the OBO standard agreement. Landlords who are unable to register their leases do not have permission to lease.

#### NO RULE OF LAW MEANS NO LEGAL SOLUTION

15. (SBU) Turkmenistan remains an authoritarian state with no rule of law. The enforcement or non-enforcement of contracts and laws can be entirely arbitrary, depending on the will of those in decision-making positions. The USG has no recourse to a fully implemented body of law, nor to a properly functioning legal system. Instead, on the ground reality is that the legal system, such as it is, is enforced by individuals who lack judicial independence. As a result, the Embassy is unable to pursue a legal argument for the sanctity of our leases in local courts.

¶6. (SBU) Local authorities have wide discretion on how to apply vague and contradictory laws. The distinction between what is legal or illegal often depends solely on what is in fact allowed or authorized at the implementing local levels. In essence, a local authority can have the power to determine legality based on whether or not it stamps the relevant paperwork. This is precisely the situation in which Post finds itself with regard to lease registrations. The President's top advisors have decreed that all leases should be uniform, so all leases will be uniform. How such a policy is implemented, what effect the changes might have, or what the rights of the parties are not considerations.

#### A NEGOTIATED SOLLUTION

¶7. (U) Because of the status of the local judicial system, Post has worked to find a negotiated solution with the local authorities responsible for registration and permission to lease. Careful negotiations over several weeks have finally resulted in tentative approval to modify the USG's existing leases, instead of replacing them with the new local model lease. The local registering authorities have requested the Embassy to make two small changes and remove Article 14, the "Disputes Resolution" clause. The local registration authorities have, on more than one occasion, asserted that Article 14 is not locally applicable. Post believes that given the absence of a functioning judiciary, there is virtually no chance that a landlord would engage the Embassy according to the terms of the Contracts Disputes Resolution, in a U.S. or Turkmenistan court.

¶8. (U) ACTION REQUESTED: Post believes finding a negotiated solution with those who control its ability to rent residential properties is the best possible resolution and kindly requests that the Department expeditiously authorize a waiver for the removal of Article 14. Once amended, Post will submit one lease for registration. Should this negotiated method prove successful, Post will amend its other leases, as they come up for registration.

¶9. (SBU) COMMENT: While the new decree makes the landlord exclusively the subject of the new law, the potential effect is primarily on the Embassy. Landlords who cannot register their leases cannot continue to rent to the Embassy, threatening operations. Other individuals and institutions, including several Western embassies, have simply opted to subject themselves to the newly proscribed lease. Post hopes to avoid such a fate, as the terms and conditions of the local model lease sharply alter the balance of rights and responsibilities in favor of the landlord and include items such as a maximum lease term of one year. At the moment, Post's landlords are under extreme pressure to register. One landlord has already sent a request for termination because he cannot get permission to lease using the existing Embassy lease. A speedy resolution to this issue is essential, because defiance of Turkmen authorities, for any reason, is dangerous for local nationals. END COMMENT.

¶10. (U) For further information please contact Management Officer Jonathan Bayat (bayatj@state.gov).

MILES